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Letter dated 15 March 2006 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached fifth report from Djibouti submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Ellen Margrethe **Løj**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

[Original: French]

Note verbale dated 9 March 2006 from the Permanent Mission of Djibouti to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

The Permanent Mission of the Republic of Djibouti to the United Nations presents its compliments to the Committee and, in reference to its note of 16 November 2005, has the honour to transmit to it herewith the fifth report of Djibouti on the implementation of the provisions of Security Council resolution 1373 (2001) (see enclosure).

Enclosure

[Original: French]

1. **Implementing measures**

1.1 **From the information available to the Committee, it appears that Djibouti does not have specific domestic legislation to criminalize terrorist financing. The Committee notes that Djibouti expects to become party in the near future to the International Convention for the Suppression of the Financing of Terrorism. Therefore, the Committee would appreciate receiving a progress report on steps taken to become party to this Convention as well as on fully implementing it.**

The draft legislative act ratifying the International Convention for the Suppression of the Financing of Terrorism was adopted by the Council of Ministers on 8 November 2005 and referred to the National Assembly. Following consideration by its Committee on Foreign Affairs on 24 December 2005, the National Assembly deliberated on the draft act and adopted it in plenary session on 31 December 2005.

On 10 March 2006, the instruments of ratification were deposited with the Secretary-General, who is the depositary.

Penal Code articles 167, 168 and 171 on terrorism and article 231 on the obstruction of justice are in the process of being amended to bring them into line with article 2 of the International Convention for the Suppression of the Financing of Terrorism.

1.2 **The Committee notes that the reform of Djibouti's Penal Code is still at the planning stage. The Committee would like to draw attention to paragraph 3 (e) of resolution 1373 (2001), which calls upon all States to fully implement the relevant international conventions and protocols relating to terrorism, and would appreciate receiving a progress report on that issue.**

The Republic of Djibouti has ratified all 12 multilateral counter-terrorism instruments as well as the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption.

Its Penal Code, which came into force in 1995, already characterizes terrorist acts as a crime that carries severe punishment. The Republic of Djibouti has also taken measures to combat money-laundering, which may be extended to the financing of terrorist acts.

The Republic of Djibouti has already begun to reform its domestic legislation in order to put in place measures designed to incorporate the provisions of multilateral counter-terrorism instruments and the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption in its internal legal order.

The proposed amendments to the Penal Code and to Act No. 196 on Money Laundering, Confiscation and International Cooperation with respect to the Proceeds of Crime are now being brought into line with the provisions of the international conventions Djibouti has ratified.

1.3 **Djibouti indicates in its fourth report (p. 4) that there is no administrative measure allowing the temporary seizure of assets simply on a suspicion. Paragraph 1 (c) of resolution 1373 (2001) stipulates that all States shall freeze without delay funds and other assets of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts: of entities owned or controlled by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities. The Committee notes that, for this purpose, the said funds and assets need not be the proceeds of a crime; they may be legal in origin. How does Djibouti plan to give effect to this provision of the resolution?**

Where there is evidence that persons have committed or attempted to commit terrorist acts, or have facilitated or participated therein, they can be prosecuted and their assets seized under articles 167 et seq. of the Penal Code. Pursuant to article 4.1.1 of the Act on Money Laundering, the judicial authorities and competent officials in charge of the detection and suppression of offences related to money-laundering and the financing of terrorism can seize assets in connection with the offence.

1.4 **The Committee takes note of Djibouti's statement that under article 4 (1) (1) et seq. of the Act on Money Laundering, any report of a suspicious transaction by the Financial Information Service or the Public Prosecutor's Office may give rise to measures ordering the confiscation of assets seized by a judge. Since these articles refer only to money-laundering offences, it is not clear whether the assets of persons or entities suspected of involvement in terrorist activities are also covered. The Committee would appreciate further information on that point.**

With a view to ensuring more effective application of the measures to combat terrorist activities, the title of Act No. 196/AN/02/4ème L on Money Laundering, Confiscation and International Cooperation with respect to the Proceeds of Crime should be expanded to include a specific reference to the financing of terrorism. This amendment should define the concept of the financing of terrorism and ensure that legal provisions concerning freezing, confiscation and international cooperation also pertain to the assets of persons or entities suspected of participating in terrorist activities.

1.5 **Please indicate which provision of the Act on Money Laundering ensures that the financing of terrorism is designated as a predicate offence for money-laundering.**

Articles 1.1.2, 3.1.1, 3.1.7, 4.1.1, 4.2.9, 5.1.1, 5.2.1, 5.3.1, 5.3.5, 5.4.1 and 5.4.2 of the Act on Money Laundering, Confiscation and International Cooperation with respect to the Proceeds of Crime are consistent with articles 8 and 14 of the International Convention for the Suppression of the Financing of Terrorism.

The title of Act No. 196/AN/02/4ème L on Money Laundering, Confiscation and International Cooperation with respect to the Proceeds of Crime will be amended to include the financing of terrorism. The regime in place for money-laundering will also be extended to the financing of terrorism.

1.6 **The Committee would be grateful to receive a copy of the decree determining the composition and functioning of Djibouti's financial intelligence unit (FIU). Also please clarify whether the FIU established under the Act on Money Laundering and the Economic and Financial Investigation Brigade**

(BEFI) mentioned in Djibouti's letter of 16 July 2002, transmitting its request for technical assistance, are the same body.

Pursuant to the Act on Money Laundering, a Financial Intelligence Unit (FIU) was set up at the decision of the Governor of the Central Bank of Djibouti. This Unit is responsible for gathering, processing and disseminating information on clandestine or criminal financial networks, money-laundering and the financing of terrorism.

The Financial Intelligence Unit and the Economic and Financial Investigation Brigade are one and the same entity, even if it has gone by a number of different names at different times; henceforth, it will be known as the Financial Intelligence Service.

As soon as it is adopted, we will send you the decree on the establishment, composition and functions of the Financial Intelligence Service referred to in article 3.1.1. of Act. No. 196/AN/02/4eme L on Money Laundering, Confiscation and International Cooperation with respect to the Proceeds of Crime.

1.7 **The Committee takes note of the provisions of the Act on Money Laundering which regulate alternative currency transfer systems and would appreciate information on how many informal currency remittance/transfer services still operate without authorization and what measures are envisaged to put an end to such activities.**

There are no alternative currency transfer systems. A large-scale campaign was initiated in 2001, to conduct on-site inspections of all currency exchange offices. The offices that met the requirements for practising the money-changing profession were officially registered, while those that did not were closed by instruction of the Governor of the Central Bank. Authorized currency exchange offices are inspected annually and are placed on the list of financial intermediaries registered by the Djibouti Central Bank.

1.8 **The Committee would be grateful to receive further information on the foreign charitable associations mentioned in Djibouti's third report (p. 4). Are these associations based in Djibouti and, if so, are they subject to registration and auditing?**

The foreign charitable associations mentioned in the third report are based in foreign countries. Their activities in Djibouti are limited to support and assistance. The associations based in Djibouti are subject to registration and auditing.

1.9 **Do members of the judiciary receive training in ways of dealing with terrorist issues? Are officers of the criminal investigation police adequately trained to investigate sophisticated terrorist offences and to track down terrorists?**

Some members of the judiciary have attended seminars on terrorism but none have received specific training. However, the Djibouti criminal investigation police (OPJ) have been trained to deal with terrorist issues at home and to cooperate with their colleagues in the United States and France and in the Arab countries.

The criminal investigation officers of the National Gendarmerie do not consider themselves adequately trained to investigate sophisticated terrorist offences

and to track down terrorists and have requested short-term training courses so as to be able to handle counter-terrorist investigations competently and expeditiously.

Djibouti is discussing, with international authorities and the Counter-Terrorism Committee in particular, the possibility of providing members of the judiciary and their assistants with appropriate training in counter-terrorism.

The criminal investigation police is of the opinion that the police and National Gendarmerie officers responsible for fighting criminal organizations (whether terrorists or drug traffickers) should also receive training in investigation techniques. Djibouti would therefore like to obtain programmes for counter-terrorist police officers to the extent that such training will be provided.

1.10 **In its second report, Djibouti indicates that it has taken administrative measures to strengthen police procedures at border points. Please describe briefly the measures undertaken. The Committee would also appreciate information on procedures and equipment used to detect forged, altered or stolen identity papers and travel documents at border points.**

The principal measures undertaken include the installation of a computer network with the Personal Identification Secure Comparison and Evaluation System (PISCES) at the airport and in the immigration service; the establishment of monitoring measures at various levels, including a sterile area at the airport; and a project to extend PISCES to land and maritime border posts.

1.11 **The Committee would appreciate it if Djibouti would elaborate on the steps it has taken or is contemplating in order to enhance measures aimed at preventing the forgery or falsification of national identity and travel documents with a view to meeting minimum international security standards.**

Machine-reading of travel documents is currently performed only at the Djibouti airport. Police officers who have been trained to detect false documents currently use an ultraviolet lamp and a magnifying glass.

With regard to preventing the forgery or falsification of travel documents, such documents are computer generated, in accordance with international security standards. A digitized sticker is currently being developed for visas.

1.12 **How does Djibouti monitor its borders (sea and land) between entry points in order to ensure that terrorists do not use its territory in transit?**

A. Police are stationed at all official border entry points including the airport, the port, and border posts such as Galileh, Loyada and Galafi. All other sea and land entry points are controlled by the Djibouti Armed Forces.

B. In an effort to control the circulation of goods and persons in highly sensitive areas on land and sea, the Republic of Djibouti has implemented measures to monitor entry into its territory. Permanent checkpoints have been set up at clearly identified entry points and are monitored jointly by the police force and the armed forces. The four land border posts are located at:

1. Loyada on the way to Somalia
2. Galileh on the way to Ethiopia
3. Galafi on the way to Ethiopia

4. Moulhoule on the way to Eritrea

There is just one maritime border post, at the international port of Djibouti; it applies the international security system.

In an effort to compel nationals and foreigners to use these entry points only and prevent them from trying to enter Djibouti by any other route the armed forces (land, sea and air) have been stationed at strategic points. This enables them to monitor the entire territory by means of a sophisticated communications network.

The division of the national territory into five military land zones and one maritime zone has also contributed to the efficiency of the system. In addition to the prescribed entry/exit checkpoints, there are 17 land surveillance border posts and six maritime surveillance posts, one of which possesses a semaphore.

Realizing that no system is 100 per cent secure, the military high command continues to be vigilant and to focus on keeping the deployed forces at the highest level of readiness and on strengthening the current system by conducting long-term studies internally while cooperating with Djibouti's American and French partners.

For example, as regards land arrangements the rapid response force has been turned into a counter-terrorist regiment, using material provided under a cooperation agreement between the United States and Djibouti.

With respect to maritime arrangements, the following projects will enhance the current system:

(1) Installation of two new semaphores by 2008, with the cooperation of the French Government.

(2) Establishment of a maritime surveillance post in the North in 2006.

(3) Establishment of a naval base north of the Gulf of Tadjoura in 2006, with the cooperation of the United States; this will make it possible to efficiently monitor the Strait of Bab al Mandab.

With respect to border surveillance, as a full member of the Intergovernmental Authority on Development (IGAD), Djibouti acceded to the Protocol on the Establishment of a Conflict Early Warning and Response Mechanism (CEWARN) on 9 January 2002 in Khartoum (the Sudan). It ratified the Protocol on 7 April 2005.

CEWARN works in cooperation with national early warning units called CEWARUs, based in each IGAD member State (Djibouti, Ethiopia, Eritrea, the Sudan, Uganda and Somalia). Within that regional organization the commissioners of each district of Djibouti meet with their counterparts from Ethiopia and Eritrea to exchange information on border surveillance and to discuss ways to ensure that only authorized entry points are used.

One important issue to be discussed by Ethiopia, Eritrea and Somalia concerns the need to carefully monitor the seasonal migration of nomads because terrorists can disguise themselves as nomads and cross borders with the herds. Djibouti has therefore increased surveillance of its borders with those countries.

1.13 **The Committee would be grateful to receive an outline of measures taken to facilitate the provision of assistance to the judicial authorities of other countries.**

Djibouti provides assistance to the judicial authorities of other countries through assistance with investigations, international letters rogatory, the transmission of judicial documents, the transfer of prisoners and extradition. Such assistance is accorded to countries which have signed legal cooperation agreements with the Republic of Djibouti, in compliance with the terms of those agreements, and to other countries on a reciprocal basis.

1.14 **Can a request for extradition or for mutual legal assistance in connection with a terrorist offence be refused on the grounds that the said offence is political in nature?**

The grounds on which the Republic of Djibouti can deny extradition of an individual are very limited, for example if the offence for which extradition is requested is considered a political offence in the Republic of Djibouti or if the request is politically motivated (article 5.3.3 of the Act on Money Laundering).

On the other hand, if the request for extradition or mutual legal assistance involves a terrorist offence the Republic observes the obligations imposed by the universal counter-terrorism instruments to which it is a party.

1.15 **What are the extraditable offences under existing extradition treaties to which Djibouti is a party?**

Requests for extradition of persons sought for purposes of a proceeding in a foreign State for the offences stipulated in articles 1.1.1, 4.2.1, and 4.2.5.1 of the Act on Money Laundering and for the offence of financing of terrorism shall be executed.

Article 536 of the Code of Criminal Procedure lists the acts that can give rise to a request for or granting of extradition, as follows:

(1) Any act subject to serious penalties under the law of the requesting State;

(2) Acts subject to correctional penalties under the law of the requesting State, when the maximum applicable penalty under that law is two years or more or, if the person has been convicted, when the sentence imposed by the court of the requesting State is four months or more of imprisonment.

In no case shall extradition be granted if the act is not punishable under Djiboutian law by a serious or correctional penalty.

Any attempt or incitement to commit, or complicity in the committal of, an act shall be subject to the preceding rules provided that they are punishable under the law of both the requesting and the requested State.

If the request involves several offences committed by the person sought and he has not yet been tried for them, extradition shall be granted only if the minimum sentence imposed under the law of the requesting State for those combined offences is at least two years' imprisonment.

If the person sought has been convicted in any country and sentenced to four months or more of imprisonment for an offence under ordinary law, extradition shall be granted in accordance with the preceding rules, that is, only for crimes or offences without regard to the severity of the sentence applicable or imposed for the prior offence.

The preceding shall apply to offences committed by members of the military, the navy or similar bodies when they are punishable under Djiboutian law as an offence under ordinary law.

1.16 **The Committee would appreciate an outline of the provisions of Djibouti's Penal Code dealing with extradition.**

Articles 533 and following of the Code of Criminal Procedure cover the provisions regarding extradition.

– Conditions for extradition are regulated by articles 533 to 540.

– Extradition procedure is covered by articles 544 to 551.

– The effects of extradition are listed in articles 522 to 556.

1.17 **With regard to paragraph 2 (a) of resolution 1373 (2001), which concerns the recruitment of and supply of weapons to terrorists, the Committee takes note of Djibouti's statement that it has not experienced such a situation and therefore has no specific measures for punishing the aforementioned activities. However, the Committee wishes to emphasize that States should have legislation covering all aspects of the resolution in place and, in that regard, urges Djibouti to take all practicable measures, including reviewing its criminal legislation, with a view to the prevention or punishment of such acts.**

Article 171 of the Penal Code criminalizes "participation in a group" as a preparatory action towards the commission of an act of terrorism.

Its scope of application can be extended to other offences covered by the universal counter-terrorism instruments, such as the recruitment of members of terrorist groups.

It has already been noted in previous reports to the Committee that an important law, Act No. 62-621 of 2 June 1962 specifies the rules for importing, selling, transferring, transporting, bearing, owning and exporting weapons, armaments, ammunition and war materiel in the Republic of Djibouti which are prohibited to all save State facilities.

Any infringement of the provisions of this Act is punishable by 1 to 5 years' imprisonment and a fine ranging from 36,000 to 3.6 million Djibouti francs, confiscation of the weapons impounded and a prohibition of residence for a maximum period of five years.

2. **Implementation of resolution 1624 (2005)**

2.1 **What measures does Djibouti have in place to prohibit by law and to prevent incitement to commit a terrorist act or acts? What further steps, if any, are under consideration?**

Article 25 of the Penal Code stipulates "anyone who, by means of a gift, promise, ruse, threat, abuse of authority or power, has caused an act that is considered a crime or offence or has given instructions for its commission, shall be considered an instigator and shall be punished on the same basis as a perpetrator."

This article allows the prosecution of those who incite the commission of terrorist acts listed and punishable under article 167 and following of the Penal Code having to do with terrorism.

Article 181 of that Code stipulates: "direct provocation of an armed group, whether by public slogans or statements, or by written material displayed, distributed or transmitted by another means in written, spoken or visual form, shall be punishable by three years' imprisonment and a fine of 1 million Djibouti francs. When the provocation leads to actions, the penalty shall be raised to 10 years' imprisonment and a fine of 5 million Djibouti francs."

The provisions of article 390 of the Penal Code designed to prevent discrimination on the grounds of a person's origin, actual or assumed affiliation with a specific ethnic group, nation, race or religion, may be applied to such acts.

The provisions of resolution 1624 (2005) have not yet been fully incorporated into the domestic legal system, but the Republic of Djibouti will study ways and means to accelerate their introduction into national legislation.

2.2 **What measures does Djibouti take to deny safe haven to any persons with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of incitement to commit a terrorist act or acts?**

Djibouti legislation provides for measures to deny assistance to a person who is believed to have committed such acts or activities:

- Either by refusing him entry into its territory by denying a visa.
- Or by taking measures to expel him if the suspect disturbs public order.
- Or by bringing him before the courts if it is proven that he committed the reprehensible actions provided for in and punishable under Djiboutian criminal law.

2.3 **How does Djibouti cooperate with other States in strengthening the security of its international borders with a view to preventing those guilty of incitement to commit a terrorist act or acts from entering their territory, including by combating fraudulent travel documents and, to the extent attainable, by enhancing terrorist screening and passenger security procedures?**

Since its independence, the Republic of Djibouti, which is located in a region wracked by multiple conflicts and wars, has played a predominant and essential role in bringing peoples together because many nations use its seaport and airport infrastructure.

The Republic of Djibouti cooperates with its neighbours (Eritrea, Ethiopia and Yemen) to strengthen the security of its international borders, and with countries that work overseas to provide international peacekeeping and anti-terrorism missions.

Firstly, the Republic of Djibouti regularly exchanges information with its partners in the Horn of Africa through a cross-border commission that meets twice a year.

Also, the presence of a significant number of foreign troops (from France and the United States) enables Djibouti to engage in close collaboration aimed at ensuring the security of ports and airports for the benefit of all.

Other nations have a permanent presence in Djibouti and help strengthen the overall security of the country's land and sea borders.

2.4 **What international efforts is Djibouti participating in or considering participating in/initiating in order to enhance dialogue and broaden understanding among civilizations in an effort to prevent the indiscriminate targeting of different religions and cultures?**

Djibouti accepts the practice of monotheism. Any attempt to denigrate a religion is regarded as blasphemous and is punishable by the Djiboutian justice system.

With regard to cultures, Djibouti engages in cultural exchanges with neighbouring countries and with member countries of the League of Arab States.

Moreover, in the past decade Djibouti has become a cultural meeting place as demonstrated by the fact that it is host to the "FEST HORN" music festival.

2.5 **What steps is Djibouti taking to counter incitement of terrorist acts motivated by extremism and intolerance and to prevent subversion of educational, cultural and religious institutions by terrorists and their supporters?**

The Ministry of National Education and Higher Education, assisted by the Ministry of Religious Affairs, introduced a national rule governing programmes implemented in schools and in cultural and religious institutions.

Inspectors monitor the implementation of programmes approved by the Ministry of National Education. Any attempt to interfere with the programmes and use them to promote hatred is punishable under the law.

2.6 **What is Djibouti doing to ensure that any measures taken to implement paragraphs 1, 2 and 3 of resolution 1624 (2005) comply with all of its obligations under international law, in particular international human rights law, refugee law, and humanitarian law?**

The following constitutional provisions set forth the protection afforded to all individuals:

Article 15, paragraph 1: "All individuals shall be entitled to express and to freely disseminate their opinions, whether through the spoken word, in writing, or in visual form. Such rights shall be exercised in accordance with the law and with the requirement to respect the dignity of others."

These rights protect Djibouti nationals, as well as aliens who reside legally in the national territory, as reflected in the following provisions:

Article 18: "Any alien who resides legally in the national territory shall enjoy the protection of the law with respect to person and property."

Article 19: "The State shall protect the rights and legitimate interests of Djiboutian nationals while they are abroad."

Furthermore, upon gaining its independence in 1977 the Republic of Djibouti acceded to the Convention relating to the Status of Refugees and adopted a law regulating the status of refugees.

3. **Assistance and guidance**

3.1 **The Committee wishes to emphasize once more the importance that it attaches to the provision of assistance and advice in connection with the implementation of the resolutions. The Committee's Directory of Assistance (www.un.org/sc/ctc) is frequently updated to include new relevant information on available assistance. The Committee takes note of the fact that Djibouti is receiving technical assistance from the United Nations Office on Drugs and Crime (UNODC) in relation to the implementation of the universal conventions and protocols related to terrorism to which Djibouti is a party. The Committee would appreciate receiving a progress report in that regard.**

Djibouti works closely with the United Nations Office on Drugs and Crime (UNODC) on the implementation of universal instruments related to terrorism. The two parties are hoping to conduct a seminar on this subject during March 2006, for the benefit of the countries of the Intergovernmental Authority on Development (IGAD) and the Economic Community of West African States (ECOWAS).

3.2 **Furthermore, in light of the specific areas related to Djibouti's implementation of the resolution 1371 (2001) outlined in Section 1 of this letter, and based on Djibouti's reports to the Committee and on the other relevant information available, the Committee, with assistance from the CTED experts, has conducted a preliminary analysis of Djibouti's technical assistance needs in order to identify priority areas in which the Committee believes Djibouti may benefit from receiving technical assistance. With the agreement of and in cooperation with the Government of Djibouti, the aim is to identify the best possible way for Djibouti to benefit from technical assistance in order to strengthen its implementation of the provisions of this resolution.**

3.3 **The analysis identified, on a preliminary basis, the following potential areas of assistance needs, with the understanding that further assessments may be necessary. The points below represent selected areas, among the areas referred to in the resolution, where assistance might be particularly useful:**

- **Adoption of legislation specifically criminalizing the provision or collection of funds with the intent that they should be used for terrorist acts, regardless of where the act is intended to take place and of whether it is, in fact, attempted or completed;**

- **Becoming party to and fully implementing the International Convention for the Suppression of the Financing of Terrorism.**

Assistance to judicial authorities might focus essentially on training activities.

- A one or two-week training programme on-site in Djibouti with the instruction provided by experts on loan.

This would offer the advantage of reaching the largest number of judges and judicial officials, at a lower cost.

- Specialized training, held abroad, for a limited period, for prosecutors or examining magistrates responsible for investigating complex cases, especially those relating to terrorism.